



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 223]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Four Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to add species to and one petition to remove a species from the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). We also announce a 90-day finding on one petition to revise critical habitat for a listed species. Based on our review, we find that the petitions to list the Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4) and delist the southern sea otter (*Enhydra lutris nereis*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act. We further find that the petitions to list the Pryor Mountain mustang population (*Equus caballus*) and to revise the critical habitat designation for Sonora chub (*Gila ditaenia*) do not present substantial information indicating the petitioned actions may be warranted. Therefore, we are not initiating status review of the Pryor Mountain mustang population or proceeding with a revision of critical habitat for the Sonora chub.

DATES: These findings were made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES: *Supporting documents:* Summaries of the basis for the petition findings contained in this document are available on <https://www.regulations.gov> under the appropriate docket number (see tables under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter the appropriate docket number (see table 1 under **SUPPLEMENTARY INFORMATION**). Then, click on the “Search” button. After finding the correct document, you may submit information by clicking on “Comment.” If your information will fit in the provided comment box, please use this feature of <https://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table 1 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on <https://www.regulations.gov>. This generally means that we will

post any personal information you provide us (see *Information Submitted for a Status Review*, below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Fish Lake Valley tui chub	Marc Jackson, Field Supervisor, Reno Fish and Wildlife Office, marc_jackson@fws.gov, 775–861–6337
Pryor Mountain mustang	Ben Conard, Acting Project Leader, Montana Ecological Services Field Office, ben_conard@fws.gov, 406–758–6882
Sonora chub	Heather Whitlaw, Field Supervisor, Arizona Ecological Services Field Office, heather_whitlaw@fws.gov, 602–242–0210
Southern sea otter	Steve Henry, Field Supervisor, Ventura Fish and Wildlife Office, steve_henry@fws.gov, 805–644–1766

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to, the Fish Lake Valley tui chub or southern sea otter, or their habitats, by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review.

However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (i.e., “list” a species), remove a species from the List (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); and
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

For petitions to revise critical habitat, our regulations establish that substantial scientific information with regard to a 90-day petition finding refers to “credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted” (50 CFR 424.14(i)(1)(i)). In determining whether a revision of critical habitat may be warranted, we may consider the following:

- (1) Areas that the current designation does not include that should be included, or

includes that should no longer be included, and any benefits of designating or not designating these specific areas as critical habitat;

(2) The physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas contain one or more of the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species and that may require special management considerations or protection;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection; and

(5) For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species.

Section 4(b)(3)(D) of the Act requires that we make a finding on whether a petition to revise a critical habitat designation presents substantial scientific information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90-days of our receipt of the petition and publish the finding promptly in the Federal Register.

Summaries of Petition Findings

The petition findings contained in this document are listed in the tables below, and the

basis for each finding, along with supporting information, is available on

<https://www.regulations.gov> under the appropriate docket number.

Table 1. Status reviews.

Common Name	Docket Number	URL to Docket on https://www.regulations.gov
Fish Lake Valley tui chub	FWS-R8-ES-2022-0010	https://www.regulations.gov/docket/FWS-R8-ES-2022-0010
Southern sea otter	FWS-R8-ES-2022-0013	https://www.regulations.gov/docket/FWS-R8-ES-2022-0013

Table 2. Not-substantial petition findings.

Common Name	Docket Number	URL to Docket on https://www.regulations.gov
Pryor Mountain mustang population	FWS-R6-ES-2022-0011	https://www.regulations.gov/docket/FWS-R6-ES-2022-0011
Sonora chub	FWS-R2-ES-2022-0012	https://www.regulations.gov/docket/FWS-R2-ES-2022-0012

Evaluation of a Petition to List the Fish Lake Valley Tui Chub

Species and Range

Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4); Nevada.

Petition History

On March 10, 2021, we received a petition from the Center for Biological Diversity requesting that the Fish Lake Valley tui chub be listed as an endangered species or a threatened species and critical habitat be designated for the species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

The petitioner provided credible information indicating potential threats to the Fish Lake Valley tui chub due to Factor A (effects of agriculture, encroachment of aquatic plants, geothermal energy, lithium mining) and Factor E (climate change and stochastic events).

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. Based on our review of the petition and readily available information regarding Factors A and E, we find that the petition presents substantial scientific or commercial information indicating that listing the Fish Lake Valley tui chub (*Siphateles bicolor* ssp. 4) as an endangered or threatened species may be warranted. The Service will fully evaluate all potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at [https:// www.regulations.gov](https://www.regulations.gov) under Docket No. FWS-R8-ES-2022-0010 under the Supporting Documents section.

Evaluation of a Petition to List the Pryor Mountain Mustang Population

Species and Range

Pryor Mountain mustang population (*Equus caballus*); Montana, Wyoming.

Petition History

On June 19, 2017, we received a petition dated June 12, 2017, from Friends of Animals requesting that the Pryor Mountain mustang population be listed as an endangered species or a threatened species under the Act. However, the Service notified the petitioner that the submission did not qualify as a petition because it did not include copies of required notification letters or electronic communications to State agencies in affected areas as required by 50 CFR 424.14(c).

The petitioner filed a complaint challenging the Service's denial of the petition, and following litigation and appeal, on July 19, 2021, the petition was remanded to the Service. This finding addresses the petition.

Evaluation of Information Summary

We evaluated information provided in the petition to determine if the petition identified an entity that may be eligible for listing as a distinct population segment (DPS) under the

Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS policy) (61 FR 4722; February 7, 1996). The petition presents substantial information that the Pryor Mountain mustang population may be discrete due to its physical separation from other feral horse herds, but it does not present substantial information that the population may be significant to the taxon as a whole. The petition makes no assertion that it occurs in an unusual or unique ecological setting or that it represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. The petition does not present substantial information that loss of the discrete population segment would result in a significant gap in the range of the taxon (*Equus caballus*), or that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. Nor does the petition present any other information in support of the significance of the Pryor Mountain population. Furthermore, the weight of scientific evidence based on readily available information shows that feral horses are nonnative and may impede the conservation of ecosystems upon which endangered and threatened species depend. Therefore, we did not further evaluate whether the petition presents substantial information indicating that the petitioned action may be warranted.

Finding

Based on our review of the petition, sources cited in the petition, and other readily available information, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned entity may be a listable entity under the Act. The petition does not present substantial scientific or commercial information indicating that the petitioned entity may meet the significance criteria of our 1996 DPS policy (61 FR 4722) and, therefore, that it is a listable entity under the Act.

Because the petition does not present substantial information indicating that the Pryor Mountain mustang population may be a listable entity under the Act, we are not initiating a status review of this population in response to this petition. However, we ask that the public

submit to us any new information that becomes available concerning the status of, or threats to, this population or its habitat or new information that qualifies this population as listable entity under the Act at any time (see appropriate contact under **FOR FURTHER INFORMATION CONTACT**, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at [https:// www.regulations.gov](https://www.regulations.gov) under Docket No. FWS-R6-ES-2022-0011 under the Supporting Documents section.

Evaluation of a Petition to Revise Critical Habitat for the Sonora Chub

Species and Range

Sonora chub (*Gila ditaenia*); Arizona, Mexico.

Petition History

On August 6, 2021, we received a petition dated July 30, 2021, from Center for Biological Diversity, requesting that critical habitat be revised for the Sonora chub, a threatened species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

We evaluated information provided in the petition to determine if a revision to the existing critical habitat designation to include the California Gulch may be warranted. The petition does not present substantial scientific information that demonstrates that California Gulch is essential to the conservation of Sonora chub—only that the species occurs there, that it may be affected by livestock grazing, and that there is an alleged state of noncompliance with an existing biological opinion. The petition’s summary statement that the stream designation of all occupied and historically occupied habitat is prudent and necessary to ensure the survival and recovery of Sonora chub is therefore unsupported. We conclude that the petition does not present substantial scientific information that the revision to the existing critical habitat is

warranted.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific information indicating the petitioned action may be warranted for the Sonora chub. Because the petition does not present substantial information indicating that revising critical habitat for the Sonora chub may be warranted, we are not initiating a review of the designated critical habitat for this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see appropriate contact under **FOR FURTHER INFORMATION CONTACT**, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at [https:// www.regulations.gov](https://www.regulations.gov) under Docket No. FWS-R2-ES-2022-0012 under the Supporting Documents section.

Evaluation of a Petition to Delist the Southern Sea Otter

Species and Range

Southern sea otter (*Enhydra lutris nereis*); marine environments from San Mateo County to Ventura County, California.

Previous Federal Actions and Petition History

On January 14, 1977, we published a final rule (42 FR 2965) to list the southern sea otter as a threatened species. In that rule, we identified the curtailment of range as an important factor in the designation of southern sea otters as threatened, citing the fact that the then-current range encompassed only about 10 percent of the southern sea otter's historical range. We also noted that the “remaining habitat and population [were] potentially jeopardized by oil spills, and possibly by pollution and competition” with human beings. Since that time, additional threats have emerged (Service 2015). On March 10, 2021, we received a November 2020 petition from the Pacific Legal Foundation, counsel for California Sea Urchin Commission and Commercial

Fishermen of Santa Barbara, requesting that the southern sea otter be removed from the List of Endangered and Threatened Wildlife (“delisted”) because the species does not meet the Act’s definition of an endangered species or a threatened species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

The petition notes that the southern sea otter’s occupied range has nearly doubled since the species’ listing in 1977 and that the population has increased since systematic counts began in the early 1980s. The citations provided in the petition (Service 2015 and Hatfield et al. 2019) substantiate that the linear extent of the range has increased from about 293 km to 500 km and that the southern sea otter population has increased. These citations support the claim of a reduction in the threat of curtailment of habitat since the time of listing. The petition notes that offshore crude oil loading and unloading facilities at Moss Landing, Estero Bay, and Morro Bay have closed. The closure of these facilities, which eliminates the possibility of a spill from them, supports the claim of a reduction in the threat of an oil spill since the time of listing. The citations provided in the petition (California’s Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (1990) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*)) support the claim that regulatory changes and new technologies to improve oil tanker safety have occurred, which may reduce the oil spill threat to the southern sea otter since the time of listing. The citations provided in the petition offer support for the claim that regulations have improved vessel traffic control in the range of the southern sea otter, which may reduce the oil spill threat to the southern sea otter since the time of listing. The citations provided in the petition offer support for the claim that regulations, technology, and industry practices for offshore oil rigs have improved, which may reduce the oil spill threat to the southern sea otter since the time of listing.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as may be ameliorated or may be exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition, sources cited in the petition, and other readily available information regarding reduction of the threats of habitat curtailment (Factor A) and oil spills (Factor E), we find that the petition presents substantial scientific or commercial information indicating that delisting the southern sea otter may be warranted. The petitioners also presented information suggesting reduction of additional threats to the southern sea otter within Factors A (present or threatened destruction, modification, or curtailment of habitat) and C (disease or predation). We will fully evaluate these factors during our 12-month status review, pursuant to the Act’s requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2022-0013 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Fish Lake Valley tui chub and southern sea otter present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species. In addition, we have determined that the petitions summarized above for the

Pryor Mountain mustang population and Sonora chub do not present substantial scientific or commercial information indicating that the petition actions may be warranted. We are, therefore, not initiating a status review for the Pryor Mountain mustang population or proceeding with a revision of critical habitat for the Sonora chub in response to the petitions.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Signed: _____

Martha Williams

Director,

U.S. Fish and Wildlife Service.

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